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SUBJECT GROUP 1600-1699 PERFORMANCE AND DISCIPLINE

SUBGROUP 1640 - CONFINEMENT

1640.1 Confinement at Naval Brig (NAVBRIG), Norfolk, VA

a. Pretrial Confinement. Commanding officers (COs) and officers in charge (OICs) will not place personnel under their command in confinement awaiting trial unless the circumstances clearly indicate that imposition of a lesser degree of restraint, or no restraint, will not suffice to ensure presence of the individual at trial or prevent serious criminal misconduct. Pretrial confinement shall not be imposed in cases in which the command intends to dispose of charges at NJP or SCM. COs and OICs should make the initial pretrial confinement decision themselves when at all possible. Pretrial confinement will be held to an absolute minimum by expeditious completion of pretrial procedures and the trial itself. COs and OICs shall undertake the following actions within the specified time frames from when an accused is placed in pretrial confinement:

(1) **Within 48 hours.** Conduct a review to determine whether there is probable cause for the ordered pretrial confinement. If someone other than the CO/OIC ordered the confinement, the results of this probable cause review should be reduced to writing by the CO/OIC.

(2) **Within 72 hours.** If continued pretrial confinement is warranted, prepare a memorandum per Rules for Courts-Martial (R.C.M.) 305(h)(2). In addition to the requirements of R.C.M. 305(h)(2), the memorandum should document the fact that a probable cause review was conducted within 48 hours of the accused being placed in pretrial confinement. Forward the memorandum to NAVBRIG Norfolk.

b. The Initial Review Officer (IRO), appointed in accordance with R.C.M. 305(i)(2) and JAGMAN 0127, will conduct a review of pretrial confinement. NAVBRIG Norfolk shall provide clerical and administrative support to the IRO; shall, on behalf of the IRO, maintain a copy of the documents considered and memorandum prepared under R.C.M. 305(i)(6) in each case until completion of appellate review; and shall forward a copy of the documents considered and the memorandum prepared to Staff Judge Advocate, COMNAVREG MIDLANT.

c. Within seven days of the imposition of confinement, an IRO shall review both the adequacy of the determination that there is probable cause to believe the service member has committed an offense and the necessity for continued pretrial confinement. IRO hearings are conducted periodically throughout the week at NAVBRIG Norfolk commencing at 0900. Although neither the Manual for Courts-Martial nor JAGMAN mandate it, each command is strongly encouraged to have a command representative present who is familiar with the case.

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d. Per R.C.M. 305(i)(7), any confinee, either personally or through counsel, may submit a written request to reconsider the decision to approve his/her continued confinement. This written request should be submitted to the IRO who originally reviewed the confinement decision and should describe the significant information not previously considered. Copies of this request must be submitted to NAVBRIG Norfolk and COMNAVREG MIDLANT. Requests that fail to comply with the foregoing requirements may be denied or returned for additional information and resubmission. If the original reviewing officer is not reasonably available to reconsider the request, then the Staff Judge Advocate, COMNAVREG MIDLANT, shall assign another reviewing officer.

e. Questions regarding the scheduling of hearings may be directed to NAVBRIG Norfolk. Command advice regarding the provisions of R.C.M. 305, may be obtained from the applicable Force Judge Advocate's Office or the Trial Service Office, Command Services Department. Direct contact by the command with the IRO is not recommended.